

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Daryl Black,

Petitioner,

v.

Case No. 1:09cv171

State of Ohio, *et al.*,

Judge Michael R. Barrett

Respondents.

**ORDER**

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge on February 2, 2010 (Doc. 15).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Plaintiff filed timely Objections to the Magistrate Judge's Report and Recommendation. (Doc. 22.)

Having reviewed this matter *de novo* pursuant to 28 U.S.C. 636 and Plaintiff's Objections, this Court finds the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** with prejudice; Petitioners' Motion for Stay (Doc. 11) is **DENIED**.

A certificate of appealability will not issue with respect to the ineffective assistance of counsel claim sought by Petitioner under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). A certificate of appealability will not issue with

respect to Petitioner's remaining claim challenging the weight and sufficiency of evidence because there is no showing of the denial of any constitutional right. See *id.* at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); see also 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal in *forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in "good faith," and therefore **DENIES** petitioner leave to appeal in *forma pauperis* upon a showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

**IT IS SO ORDERED.**

/s/ Michael R. Barrett  
Michael R. Barrett  
United States District Judge